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THE WOLF FIRM, A Law Corporation, erroneously  
sued herein as THE WOLF LAW FIRM, A Law Corporation

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

VICTORIA A. AMELINA, an individual;  
and A.A.;D.S.; and B.S., each individuals  
and minors by and through their Guardian  
Ad Litem, Victoria A. Amelina,

Plaintiffs.

vs.

MANUFACTURERS and TRADERS  
TRUST COMPANY aka M&T BANK,  
SAFEGUARD PROPERTIES, LC and  
THE WOLF LAW FIRM, A Law  
Corporation,

Defendants.

Case No.: 3:14-CV1906-WQH-NLS

Assigned for all Purposes to:  
The Honorable William Q. Hayes

**REPLY BRIEF OF DEFENDANT THE  
WOLF FIRM IN SUPPORT OF ITS MOTION  
TO DISMISS PLAINTIFFS' THIRD  
AMENDED COMPLAINT**

DATE: March 21, 2016  
TIME: N/A  
CTRM: 14B

NO ORAL ARGUMENT UNLESS  
REQUESTED BY THE COURT

Complaint Filed : August 13, 2014  
Trial Date : None Set

Defendant THE WOLF FIRM, A Law Corporation, erroneously  
sued as The Wolf Law Firm, a law corporation ("Wolf" or "Defendant")  
hereby respectfully submits to this Court its Memorandum of Points and  
Authorities in Reply to Plaintiffs' Opposition to its motion to dismiss the  
Third Amended Complaint ("TAC").

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## MEMORANDUM OF POINTS AND AUTHORITIES

### 1. ARGUMENT

#### A. The Wolf Firm's Principal Business Purpose Is Not, and Has Never Been, the Collection of Debts.

Plaintiffs must allege that Wolf is a “debt collector” under Section 1692a(6) and, at the time, was acting in its capacity as a debt collector when it communicated with plaintiffs in 2014. Plaintiff Victoria Amelina (the only party suing Wolf and, hereafter “plaintiff”) substantiates this position by alleging in her TAC that: (1) Wolf’s website identifies that one of its services is collection; (2) in this instance, Wolf placed a disclaimer on its foreclosure-related communications with Plaintiff Amelina that it was acting “as a debt collector attempting to collect a debt;” and (3) in the past, it has been sued for violation of both the FDCPA and RFDCPA, its principal business purpose must be the collection of debt.

However, plaintiff’s allegations still remain insufficient to allege that Wolf’s *principal* business purpose is the collection of debt. As discussed in its last motion to dismiss, and as *Schlegel v. Wells Fargo Bank, NA*, 720 F.3d 1204, 1209 (9<sup>th</sup> Cir. 2012) aptly discussed, “these allegations do not infer that the principal purpose of [Wolf’s] business is debt collection.”

Plaintiff alleges that Wolf’s website identifies it as a collection firm and even maintains a separate contact fax and email address for the Collections Department. [Doc. No. 65, ¶42.] This, allegation, in itself, concedes that Wolf may have other departments.

Indeed, in the very next allegation, plaintiff alleges that “Wolf advertises itself as being a law firm that has, for over twenty-five years, regularly ‘provided a *broad array* of legal and related services

1 throughout California and nationally to lenders, servicers, investors,  
 2 governmental agencies and other members of the financial services  
 3 community' through 'cradle-to-grave services' that include 'Collection,  
 4 Replevin/Claim and Delivery,' all regulated debt collection practices  
 5 under the FDCPA and California's Rosenthal Act." [Doc. No. 65, ¶43.]  
 6 Again, however, these allegations do not sufficiently allege that Wolf's  
 7 *principal* business purpose is the collection of debt; rather, it merely  
 8 indicates that a portion of its business is the collection of debt. While not  
 9 before the court, it should also be noted that the quoted language is  
 10 taken out of context from Wolf's website.

11 **B. Wolf does not regularly collect debt on behalf of others.**

12 Plaintiff also alleges in conclusory nature that Wolf "regularly and  
 13 directly collects or attempts to collect debts owed or due another by  
 14 accepting for collection defaulted residential loans." [Doc. No. 65, ¶37.]  
 15 But, in the very next paragraph, plaintiff alleges that Wolf "... *on behalf*  
 16 *of themselves*, engages in debt collection through acts and practices in  
 17 connection with the collection of consumer debts ..." [Emphasis added.]  
 18 [Doc. No. 65, ¶38.]

19 More important to the allegations at hand, however, is that plaintiff  
 20 infers that Wolf's conduct as a foreclosure trustee should be deemed  
 21 debt collection activity. However, Plaintiff fails to sufficiently allege that  
 22 Wolf regularly performs other non-judicially related collection activity for  
 23 others.

24 Rather, as aptly stated by this Court in its prior Orders [Doc. Nos.  
 25 35 and 57], as well as by Wolf in its moving papers, non-judicial (or  
 26 judicial) activities fall outside the scope of the FDCPA (and, ergo, the  
 27 RFDCPA). See *Izenberg v. ETS Services, LLC*, 589 F.Supp.2d 1193,  
 28 1199 (C.D. Cal. 2008); *Natividad v. Wells Fargo Bank, NA*, Case No.

3:12-cv-03646 JSC (N.D. Cal. May 24, 2013) [Wolf's moving papers.]  
 And, see *Diessner v. Mortgage Electronic Registration Systems, et al*,  
 618 F.Supp.2d 1184, 1188-1189 (D. Ari. 2009).

**C. Wolf's Conduct In This Instance Related Solely To Its Duties and Obligations Related to the Non-judicial Foreclosure Process.**

Plaintiff contends in her Opposition that Wolf's conduct went beyond its activities necessary to conduct the instant non-judicial foreclosure process pertaining to Plaintiff and her property. Plaintiff argues that, where conduct "goes beyond the statutorily mandated communications required for foreclosure, may be considered debt collectors." *Natividad v. Wells Fargo Bank, N.A.* 2013 U.S. Dist. LEXIS 74067, \*28 (N.D. Cal. May 24, 2013). [Doc. 70, 10:5-8.]

Plaintiff cites to *Memcott v. Newest Bank, FSB*, 2013 U.S. Dist. LEXIS 185388 (D. Or. Dec. 20, 2013) for the proposition that a collection letter sent during the foreclosure process but not necessary to the foreclosure, qualified as a collection effort. *Memcott*, \* 13-14.

However, plaintiff takes the citation out of context. In *Memcott*, plaintiffs had been offered a Trial Period Plan ("TPP") as a precursor to a modification arrangement. After plaintiffs submitted their third payment, the bank sent them correspondence, including plaintiffs' check for the third payment, and indicated that the amount did not cover the full amount due at that time. The letter further indicated "Please contact our office immediately for the amount required to bring your loan current." A disclaimer stating that, "For certain loans we service, we are required by federal law to inform borrowers that we are attempting to collect a debt and any information obtained will be used for that purpose." The *Memcott* court held that, in this instance, the communication was not

1 “necessary to effectuate foreclosure” and, thus, was not covered by the  
2 rule of *Hulse. Id.*, at \*14.

3 Indeed, the letter in *Memmott* had nothing to do with the non-  
4 judicial foreclosure activities, but was sent by the servicer in relationship  
5 to the outstanding loan, and what was presently due. It was not sent  
6 along with any foreclosure-related communications or otherwise did it  
7 reference foreclosure.

8 In the present case, the April 28, 2014, letter plaintiff alleges went  
9 beyond the foreclosure process was, in fact, delivered as part of the  
10 initiation of the foreclosure process. Indeed, plaintiff concedes that it  
11 was delivered via the mail in conjunction with a Notice of Default and  
12 Election to Sell Under Deed of Trust, and a letter from M&T Bank  
13 regarding foreclosure prevention alternatives. Both the April 28<sup>th</sup> letter  
14 and the M&T Bank letter explicitly confirm that non-judicial foreclosure  
15 proceedings had been initiated – as further exhibited by the attached  
16 Notice of Default. [Doc. 65-7, subdocs A and B]

17 The other cases cited by plaintiff in her opposition are critical of  
18 *Hulse*, and disagree with its position that foreclosure-related activity is  
19 not considered debt collection under the FDCPA. However, most  
20 Districts in the Ninth Circuit, including the Southern District of California,  
21 repeatedly have held that conduct related to non-judicial foreclosure  
22 activities fall outside the FDCPA (and, thus, the RFDCPA). *Pratap v.*  
23 *Wells Fargo Bank, N.A.*, No. 12-CV-06378-MEJ, 2014 WL 3884413, \*9  
24 (N.D. Cal. Aug. 7, 2014); *Izenberg v. ETS Servs., LLC*, supra, 589  
25 F.Supp.2d, 1193, 1199; *Putkkuri v. Recontrust Company*, No. 08cv1919  
26 WQH (S.D. Cal. Jan. 5, 2009); *Lobato v. Acqura Loan Services*, No.  
27 11cv2601 WQH (S.D. Cal. Feb. 23, 2012); and, recently, *Saterbak v.*  
28 *National Default Servicing Corporation*, No. 15cv956-WQH-NLS (S.D.

1 Cal. Oct. 1, 2015), citing *Santoro v. CTC Foreclosure Serv. Corp.*, 12  
2 Fed. Appx. 476, \*11-12 (9<sup>th</sup> Cir. 2001).

3 Moreover, as stated in its moving papers, courts in the 9<sup>th</sup> Circuit  
4 have repeatedly held that letters delivered in conjunction with  
5 foreclosure activities are also exempt from liability under the FDCPA.  
6 *Beckner v. ReconTrust Co., N.A.*, 12-cv-3379-GHK (FFMx), at 4 (C.D.  
7 Cal. Oct. 15, 2012); *Cochran v. Bank of New York Mellon Trust*  
8 *Company NA.*, 15-3209-GHK (JCx) (C.D. Cal. Jul. 29, 2015). Indeed,  
9 the *Cohran* court, in citing to *Beckner*, explicitly noted that “Debt  
10 Validation” correspondence relate to foreclosure-related activities:  
11 “dunning letter”, NOD, “Payoff Demand Letter,” and “debt validation  
12 demand letters,” all were “foreclosure collection activities.”; see also,  
13 *Hernandez v. Green Tree Servicing, LLC*, 2:14-cv-01438-CAS (AGRx)  
14 (C.D. Cal. June 9, 2014).

15 Finally, as previously indicated, plaintiff suggests that, since Wolf  
16 has been sued numerous times for FDCPA and RFDCPA violations, it  
17 must be a debt collector in accordance with these statutes. However,  
18 Wolf has not actually been found to be a debt collector in any of these  
19 cases (or that its conduct would have been deemed debt collection):  
20 *Ananiev v. Aurora Loan Services, LLC* (N.D. Cal. 2012); *Puicon v.*  
21 *Franklin Credit Management Corporation, et al*, 3:2015cv04449 (N.D.  
22 Cal. 2016).

23 In short, plaintiffs’ TAC against Wolf should be dismissed without  
24 leave to amend.

1     **2. CONCLUSION**

2           For the foregoing reasons, plaintiffs' Third Amended Complaint  
 3 should be dismissed as to defendant Wolf. Plaintiff Amelina fails to  
 4 allege sufficient facts to substantiate her claim that Wolf's principal  
 5 business purpose is to conduct itself as a debt collector, or otherwise  
 6 acted as a debt collector outside its obligations as the foreclosure  
 7 trustee in this instance. As such, their TAC against Wolf should be  
 8 dismissed. This is plaintiffs' fourth opportunity to sufficiently allege a  
 9 cause of action against Wolf, to no avail. Therefore, further leave to  
 10 amend appears futile. For the same reasons, plaintiffs' RFDCPA cause  
 11 of action should be dismissed as to Wolf without leave to amend.

12           Thus, Wolf respectfully requests that this court grant its motion  
 13 with prejudice.

14           Date: March 14, 2016

THE WOLF FIRM, A LAW  
CORPORATION

17           By: /s/ Abe G. Salen  
               Abe G. Salen  
 18           Attorneys for Defendant  
 19           THE WOLF FIRM, A Law  
 20           Corporation, erroneously sued herein  
               as THE WOLF LAW FIRM, A Law  
               Corporation



**CERTIFICATE OF SERVICE**

I am over the age of eighteen years and not a party to nor interested in the within action. My business address is 2955 Main Street, Second Floor, Irvine, California 92614.

A true and correct copy of the foregoing document(s), entitled:

**OPPOSITION OF DEFENDANT THE WOLF FIRM TO PLAINTIFFS' MOTION FOR LEAVE TO AMEND AND FILE THIRD AMENDED COMPLAINT**

will be served or was served (a) on the judge in chambers in the form and manner required by Local Rule ("LR") 5.4.

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders, the foregoing documents will be served by the Court via NEF and hyperlink to the document. On March 14, 2016, I checked the CM/ECF docket for this matter and determined that the following persons on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated on the attached service list.

**2. SERVED BY UNITED STATES MAIL:** On March 14, 2016, I served the following persons and/or entities at the last known address in this case by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid and addressed as follows.

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state the method for each person or entity served): Pursuant to F.R.Civ. P. 5 and/or controlling local rules, on xxxxxxxxxxxxxxxx, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the Judge here constitutes a declaration that personal service on overnight mail to, the judge will be completed no later than by 12:00 p.m. (Noon) the following business day. Service information continued on attached service list.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on March 14, 2016, at Irvine, CA.

\_\_\_\_\_  
/s/ Jess Ramos

Jess Ramos



**SERVICE LIST**

VICTORIA A. AMELINA, et al. vs. MANUFACTURERS and  
TRADERS TRUST COMPANY, et al.

Case No. 14CV1906-WQH-NLS

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